

130

FILED

2011 AUG 11 AM 10:56

PROCLAMATION
EX OFFICIO CLERK
SUPERIOR COURT
YAKIMA, WASHINGTON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

IN THE MATTER OF THE DETERMINATION
OF THE RIGHTS TO THE USE OF THE
SURFACE WATERS OF THE YAKIMA
RIVER DRAINAGE BASIN, IN
ACCORDANCE WITH THE PROVISIONS OF
CHAPTER 90.03, REVISED CODE OF
WASHINGTON

No. 77-2-01484-5

~~[PROPOSED]~~ ORDER PENDENTE LITE
RE: LEASE OF WATER RIGHTS FOR
INSTREAM FLOW RE: COURT CLAIM
NO. 00353

STATE OF WASHINGTON DEPARTMENT OF
ECOLOGY,

SUBBASIN NO. 2 (EASTON),

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.

Defendants.

This matter having come before the Court on the petitioner Washington Water Project of Trout Unlimited's ("TU") Petition for Order Pendente Lite Re: Lease of Water Right for Instream Flow Re: Court Claim No. 00353, the Court having heard from all interested parties and being fully advised;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED for the 2011 irrigation season, or until further order of the Court, as follows:

1. The Court recognizes the water right belonging to Claimants of Claim No. 00353 to have the same quantities, priorities, and season of use as confirmed for Claim No. 00353 in the Conditional Final Order for Subbasin No. 2 (Easton) issued February 13, 1997, but this

[PROPOSED] ORDER PENDENTE LITE RE:
LEASE OF WATER RIGHT FOR INSTREAM
FLOW RE: COURT CLAIM NO. 00353
PAGE 1

CASCADIA LAW GROUP PLLC
606 COLUMBIA ST. NW, SUITE 212
OLYMPIA, WASHINGTON 98501
(360) 786-5057

22,123

ORIGINAL

1 recognition does not stop Ecology from making a tentative determination of extent and validity
 2 pursuant to RCW 90.03.380 concerning the transfer of these rights. The water right that is leased
 3 to TU and authorized for transfer to instream flow is summarized below:

4 **2011 – 2013**

5 NAME	6 LOCATION & COURT CLAIM NO.	CFS	AFY	ACRES	PRIORITY DATE	CONSUMPTIVE USE
7 Lund 8 Ritter 9 Wallick 10 Agostinelli 11 Juris 12 Snyder	Big Creek Claim No. 00353	0.33 (Aug. 1 – Sept. 1) 0.25 (Sept. 2 – Nov. 15) 0.33 (Nov. 16 – Feb. 29)	20.91	N/A	6/30/1887	N/A

11 **2014 – 2016**

12 NAME	13 LOCATION & COURT CLAIM NO.	CFS	AFY	ACRES	PRIORITY DATE	CONSUMPTIVE USE
14 Lund 15 Ritter 16 Wallick 17 Agostinelli 18 Juris 19 Snyder	Big Creek Claim No. 00353	0.80 (Aug. 1, 2004 – Sept. 1, 2015) 0.55 (Sept. 2, 2014 – Nov. 15, 2015) 0.80 (Nov. 16, 2014 – Feb. 28, 2016)	50.69	N/A	6/30/1887	N/A

20 2. The authorized point of diversion for the water right is:

21 Big Creek: 1100 feet north and 750 feet east from the south quarter corner of
 22 Section 29, being within the SW1/4SE1/4 of Section 29, T. 20 N., R. 14 E.W.M.

23 3. Claimants will make this quantity of water available for instream flow by
 24 foregoing irrigation and stock watering each irrigation season (May 1 - September 1) from 2011
 25 through 2015, and for stock water from September 2 through February 29, 2016 each year from
 26 2011 through 2016. The water in trust will not cause a reduction in the amount of acres irrigated,
 27 but rather a reduction in the quantity of water applied on each acre.

4. The Court designates the place of use of the above-listed water right to be instream
 flow in the primary reach only from the original point of diversion on Big Creek as confirmed in

1 the Conditional Final Order, downstream to its confluence with the Yakima River. The Court
2 recognizes that while there will be some quantity of consumptive use of water realized by the
3 trust, the quantification of the consumed water under this trust, especially where there is no
4 reduction in the amount of irrigated acres, is uncertain and will require significant studies that is
5 not practical for this trust. Therefore, without such quantification, there is no expectation or
6 request to protect the trust water right in the secondary reach.

7 5. The trusted water right will be protected against diversion and use by junior
8 priority water users from the authorized points of diversion to the confluence of Big Creek with
9 the Yakima River. Junior priority water users will be regulated pursuant to this Court's
10 Conditional Final Order for Subbasin No. 2. Additionally, junior priority upstream water users
11 will be subject to regulations and curtailment of their diversion to ensure delivery of the above-
12 listed water rights as instream flow at the authorized diversion points, when water is available to
13 satisfy the rights.

14 6. Any junior priority water users who divert water during the effective period of this
15 Order Pendente Lite, and who cause an impairment of one or both of these instream flow water
16 rights in the designated reach, will be identified through the procedures outlined in the Court's
17 September 15, 2005 Order Requiring Metering, Measuring, and Reporting Requirements, All
18 Subbasins (1-31) in Benton, Kittitas, and Yakima Counties. TU will request that Ecology file for
19 a temporary restraining order or other appropriate relief with the Court against any such
20 unauthorized water user. Ecology will carry the burden of showing that the junior priority
21 downstream water user's diversion is the cause for the instream flow level being below the proper
22 level.

23 7. The Court hereby authorizes the transfer of the above-listed water rights to the
24 State Trust Water Rights Program, to be used for instream flow purposes from the original points
25 of diversion downstream to the confluence of Big Creek with the Yakima River. The subject
26 water rights will become part of the Yakima Basin Total Water Supply Available (TWSA) for
27 instream flow.

August 2, 2011

Department of Ecology
15 West Yakima Ave, Suite 200
Yakima WA 98902

RECEIVED

SEP 29 2011

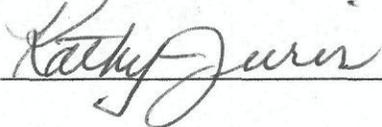
DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Re: Court Claim #00353

To Whom It May Concern:

I am the part owner of Court Claim 00353 and am working with Trout Unlimited on a 5 year lease of a portion of my interest in the water. As part of this process, Dave Lund and Bryan Ritter have been working closely with TU and the rest of the owners of lands under Court Claim 00353. Dave Lund has the authority to act as representative on my behalf while working with Trout Unlimited to enter leased water into the Trust Water Rights Program.

Thank you,



August 2, 2011

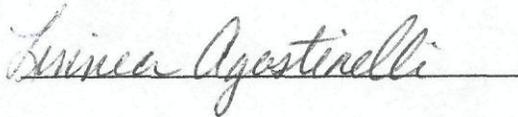
Department of Ecology
15 West Yakima Ave, Suite 200
Yakima WA 98902

Re: Court Claim #00353

To Whom It May Concern:

I am the part owner of Court Claim 00353 and am working with Trout Unlimited on a 5 year lease of a portion of my interest in the water. As part of this process, Dave Lund and Bryan Ritter have been working closely with TU and the rest of the owners of lands under Court Claim 00353. Dave Lund has the authority to act as representative on my behalf while working with Trout Unlimited to enter leased water into the Trust Water Rights Program.

Thank you,



August 2, 2011

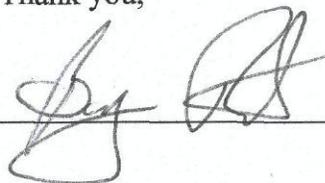
Department of Ecology
15 West Yakima Ave, Suite 200
Yakima WA 98902

Re: Court Claim #00353

To Whom It May Concern:

I am the part owner of Court Claim 00353 and am working with Trout Unlimited on a 5 year lease of a portion of my interest in the water. As part of this process, Dave Lund and Bryan Ritter have been working closely with TU and the rest of the owners of lands under Court Claim 00353. Dave Lund has the authority to act as representative on my behalf while working with Trout Unlimited to enter leased water into the Trust Water Rights Program.

Thank you,

 9-20-11

August 2, 2011

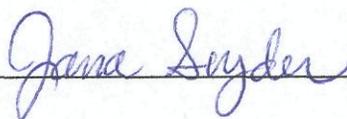
Department of Ecology
15 West Yakima Ave, Suite 200
Yakima WA 98902

Re: Court Claim #00353

To Whom It May Concern:

I am the part owner of Court Claim 00353 and am working with Trout Unlimited on a 5 year lease of a portion of my interest in the water. As part of this process, Dave Lund and Bryan Ritter have been working closely with TU and the rest of the owners of lands under Court Claim 00353. Dave Lund has the authority to act as representative on my behalf while working with Trout Unlimited to enter leased water into the Trust Water Rights Program.

Thank you,

A handwritten signature in blue ink, reading "Jana Snyder", is written over a horizontal line.

August 2, 2011

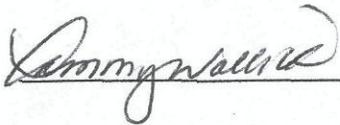
Department of Ecology
15 West Yakima Ave, Suite 200
Yakima WA 98902

Re: Court Claim #00353

To Whom It May Concern:

I am the part owner of Court Claim 00353 and am working with Trout Unlimited on a 5 year lease of a portion of my interest in the water. As part of this process, Dave Lund and Bryan Ritter have been working closely with TU and the rest of the owners of lands under Court Claim 00353. Dave Lund has the authority to act as representative on my behalf while working with Trout Unlimited to enter leased water into the Trust Water Rights Program.

Thank you,





STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

August, 26, 2011

Aaron Penvose, Trout Unlimited
Washington Water Project
103 Palouse Street, Suite 14
Wenatchee WA 98801-2251

Re: Water Right Change Application Nos. CS4-00353sb2@1 and CS4-00456sb2@1

Dear Mr. Penvose:

We have received your water right change applications and have assigned them the numbers shown above. Please use these numbers in future communications with our office.

If you have any questions, please contact Teresa Mitchell at 509-575-2597.

Sincerely,

Robert F. Barwin
Acting Section Manager
Water Resources Program

RFB:hd
110817

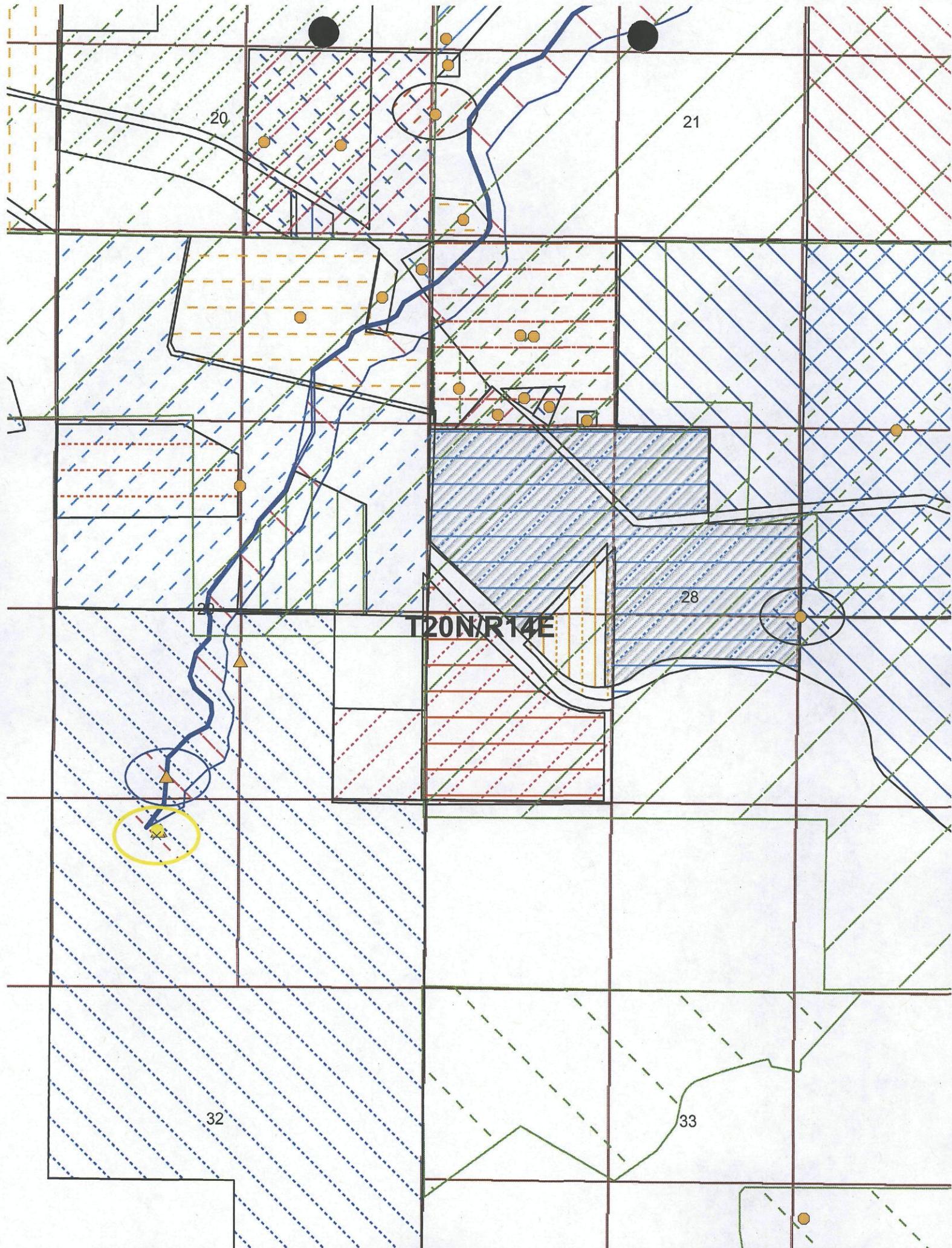
cc: Dave & Marilyn Lund

App-expedited.doc



FILE COPY 

parcel_id	Owner_Name	Owner_Addr	Owner_Ad_1	Owner_Ad_2	City
316334	WALLICK, TAMMY L		321 LUND LANE	CLE ELUM WA	
400436	RITTER, BRYAN G. ETUX		24 LUND LN	CLE ELUM WA	
146334	JURIS, LOIS K		4300 NELSON SIDING RD	CLE ELUM WA	
721336	SNYDER, JANA ETVIR	% JURIS, LOIS K & STUART C	4300 NELSON SIDING RD	CLE ELUM WA	
701336	JURIS, LOIS K		4300 NELSON SIDING RD	CLE ELUM WA	
556336	LUND, DAVID L. ETUX		210 LUND LN	CLE ELUM WA	
016334	LUND, DAVID L. ETUX		210 LUND LN	CLE ELUM WA	
711336	AGOSTINELLI, KATHLEEN L		4300 W NELSON SIDING RD	CLE ELUM WA	
208836	RITTER, BRYAN G. ETUX		24 LUND LN	CLE ELUM WA	



20

21

T20N/R14E

28

32

33

CLAIMANT NAME:

**Lee L. Lund
& Jane E. Lund
Darrel W. Mervos
Bryan Ritter
Charles M. Wallick
& Jane M. Wallick**

COURT CLAIM NO. 00353

Certificate Number:

S4-83027-J

Subbasin:

02 Easton

Source:

Big Creek

Use:

Irrigation of 80 acres and stock water

Period of Use:

May 1 through September 1 for irrigation; continuous for stock water

Quantity:

1.6 cfs; 384 acre-feet per year for irrigation, 8.84 acre-feet per year for stock watering and 0.25 cfs from May 1 through September 1, 0.767 cfs from September 2 through November 15, 1.09 cfs from November 16 through February 29, 0.767 cfs from March 1 through April 30 for consumptive stock watering

Priority Date:

June 30, 1887

Point of Diversion:

1100 feet north and 750 feet east from the south quarter corner of Section 29, being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T. 20 N., R. 14 E.W.M.

Place of Use:

Those portions of the S $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28, T. 20 N., R. 14 E.W.M. lying north of the Kittitas Reclamation District Canal; EXCEPT the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and EXCEPT those portions of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ lying southeast of the private road connecting the canal bridge crossing and the Nelson Siding Road.

Limitations of Use:

The instantaneous quantity authorized for stock watering from May 1 through September 1 is not in addition to that authorized for irrigation. When there is a surplus of water in the creek and all existing rights are being satisfied, up to 3.2 cubic feet per second and an additional 95 acre-feet per year can be diverted, provided that no more than 6.8 cfs is diverted into the Lund Ditch by all of the Big Creek Water Users on the ditch.